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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

G. B.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D042868

(San Diego County
Super. Ct. No. J510-848 C&D)

PROCEEDINGS in mandate after reference to a Welfare and Institutions Code
section 366.26 hearing. Cynthia Bashant, Judge. Petition denied.

G. B. (G.), the mother of four-year-old Jasmin B. and two-year-old Roberto B., filed this petition for extraordinary writ (Welf. & Inst. Code,¹ § 366.26, subd. (I); Cal. Rules of Court, rule 39.1B), challenging the juvenile court's ruling that terminated reunification services and set the section 366.26 permanency planning hearing. G. challenges the court's ruling that there was no substantial probability the children would be returned to her custody within the next six months. We issued an order to show cause, the San Diego County Health and Human Services Agency (HHSA) responded, and the parties waived oral argument. We review the petition on the merits and deny it.

PROCEDURAL AND FACTUAL HISTORY

On November 25, 2002, HHSA filed petitions under section 300, subdivision (b) alleging Jasmin and Roberto were at risk because G.'s excessive consumption of alcohol and methamphetamine rendered her incapable of taking care of them.²

G. had entered into a voluntary services contract with HHSA the previous August but had failed to remain sober. G. admitted she drank alcohol on at least one day in August, September, October and November and failed to attend her Narcotics Anonymous/Alcoholics Anonymous meetings. G. also acknowledged that until October 31, she was using two lines of crystal methamphetamine on a biweekly basis. On November 8 G. left the children overnight with inadequate supervision. The children

¹ All statutory references are to the Welfare and Institutions Code.

² G.'s substance abuse problem was partially responsible for the dependencies of her older daughters, with whom she failed to reunify. The girls were adopted.

were dirty and smelled like urine the next morning. Roberto's diaper had not been changed, and he had a small rash.

On December 17 G. submitted to the petitions on the basis of the social worker's report. The court sustained the petitions and ordered G. to participate in the Substance Abuse Recovery Management System (SARMS) and comply with her case plan. In addition to obtaining substance abuse treatment through SARMS, the case plan required G. to enroll in domestic violence and parenting education programs, and undergo a psychiatric/psychological evaluation and general counseling.

G. initially complied with SARMS. However, in April, the court held her in contempt for noncompliance with SARMS orders.

For the six-month review hearing, the social worker reported G. was "marginally participating" in the services that were offered, but recommended she continue to receive services. G. was dismissed from one drug treatment program and referred to another. The social worker also noted G. was inconsistent in taking medications for her depression. G. had not completed her parenting class and had not enrolled in a domestic violence class or started therapy. G. regularly visited the children and was loving and attentive to them. However, she was unable to manage the children's behavior appropriately during visits.

The attorney for the children asked for a trial on the recommendation for continued services. At a pretrial conference, HHSA reported it had changed its position and was now recommending services be terminated and a section 366.26 hearing be set. G.'s counsel asked for a trial on the new recommendation.

The social worker reported G. had been discharged from her second drug treatment program and SARMS had referred her to a third one. G. told the social worker she had problems getting to her programs on time because of the medications she took. The social worker referred her to a physician for a medication evaluation, but she failed to show up three times for the scheduled evaluation.

The social worker also reported the results of a psychological evaluation, which indicated G. had low intellectual functioning and an impaired ability to make sound judgments. G. was chronically depressed, had poor coping skills and "is easily overwhelmed and disorganized in stressful situations," according to the evaluation. The evaluator characterized G.'s ability to safely parent and protect her children as severely impaired.

At the contested six-month review hearing on September 8, the social worker testified that her original recommendation of continued services was based on G.'s medications being re-evaluated. The social worker believed that if G.'s medications were adjusted she would be able to attend her programs and show progress. However, after G. missed three appointments with the physician who was to re-evaluate her medications, the social worker questioned whether G. was capable of reunification. Citing the results of the psychological evaluation, the social worker opined the prognosis for reunification was very poor because G. lacked the cognitive abilities of a person who could raise children.

G. testified that since she had her medication changed in August she has felt much better, was able to get up earlier in the morning and could think more clearly.

The court found G. had not made substantive progress with the provisions of her case plan, the return of the children to her custody would create a substantial risk of detriment to the children, and there was not a substantial probability that the children would be returned within the next six months. The court terminated reunification services and set a section 366.26 hearing.

DISCUSSION

Ordinarily, when a child under the age of three years or the sibling of a child under the age of three years is removed from parental custody, reunification services are not to exceed a six-month period. (§§ 361.5, subd. (a)(2), 366.21, subd. (e).) In establishing the six-month provision, the Legislature intended

"to give juvenile courts greater flexibility in meeting the needs of young children, 'in cases with a poor prognosis for family reunification, (e.g., chronic substance abuse, multiple previous removals, abandonment, and chronic history of mental illness).' . . . '[V]ery young children . . . require a more timely resolution of a permanent plan because of their vulnerable stage of development. . . . [G]iven the unique developmental needs of infants and toddlers, moving to permanency more quickly is critical.' "
(*Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 611-612.)

Section 366.21, subdivision (e), provides that if the court finds at the six-month review hearing that the parent has failed to participate and make substantive progress in his or her court-ordered treatment programs, the parent is not entitled to further services unless the court finds a substantial probability that the child will be returned to parental care within six months or that reasonable services have not been provided. (§ 366.21, subd. (e).) The parent bears the burden of showing a substantial probability of return.
(*Ibid.*)

In order to find a substantial probability of return, the court is required to find the parent has consistently visited the child (§ 366.21, subd. (g)(1)(A)); the parent has made substantial progress in resolving the problems that led to removing the child (§ 366.21, subd. (g)(1)(B)); and "[t]he parent . . . has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1)(C).)

On appeal, we must defer to the factual determinations of the juvenile court. It is not our function to re-determine the facts. As long as the court's decision was supported by substantial evidence, we must affirm. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 198-200.)

Substantial evidence supports the trial court's finding there was no substantial probability that Jasmin and Roberto would be returned to G.'s custody within the next six months. Based on the record before us, we will assume G. met the requirement of maintaining regular visitation with the children. (§ 366.21, subd. (g)(1)(A).) However, G. did not meet either of the other two requirements: making significant progress in resolving the problems that had led to the children's removal from the home; and demonstrating she was capable of completing the objectives of the court-ordered treatment plan, as well as providing for the children's safety and well-being.

There was substantial evidence G. failed to make progress toward eliminating the conditions that led to the dependency—namely, her substance abuse and the protective issues surrounding it. (§ 366.21, subd. (g)(1)(B).) G.'s compliance with SARMS ended

in April, when she was found in contempt of court, and she was later discharged from two treatment programs. G. did not complete a parenting class, did not enroll in a domestic violence program and did not participate in individual therapy.

The court also had more than ample cause to question G.'s willingness, determination and capacity to meet the objectives of the reunification plan. (§ 366.21, subd. (g)(1)(C).) In her initial recommendation, the social worker gave G. the benefit of the doubt, attributing her lack of progress to her medication regimen. The social worker arranged a medication evaluation, but on three separate occasions G. did not show up for the scheduled evaluation. Despite various social services that were made available to her, including those of the San Diego Regional Center, a local agency that assists persons with developmental disabilities, G. consistently did not follow through with most of her case plan requirements. Further, the psychological evaluation set forth various mental and emotional deficits that did not bode well for G. becoming a functioning parent in the near future. All these factors led the social worker to conclude there was a "very poor" prognosis for reunification and there was no substantial probability the children would be returned within the next six months. The court was entitled to find the social worker credible and give great weight to her assessment and testimony. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.)

G. argues the court should have found there was a substantial probability of return in the next six months because her medication problem had been eliminated. We are not persuaded. There was no evidence from a service provider or professional that G. would be capable of parenting Jasmin and Roberto if she received six additional months of

services. Moreover, the appropriate standard of review is not whether there is sufficient evidence to support G.'s position, but whether substantial evidence supports the court's ruling. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) We are satisfied substantial evidence supports the court's finding of no substantial probability the children could be returned to G.'s care within the next six months.

DISPOSITION

The petition is denied.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.